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UNITED STATES DISTRICT COURT
6
SOUTHERN DISTRICT OF CALIFORNIA
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9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.
JORGE CASTANEDA-PERALTA,

12 Defendant.

CASE NO. 11CR4218WQH
CASE NO. 12CV993WQH

13 ORDER

14 HAYES, Judge:

15 The matter before the Court is the Motion to vacate, set aside or correct sentence by an
16 inmate in federal custody under 28 U.S.C. § 2255. (ECF No. 23). Defendant moves the court
17 to reduce his sentence on the grounds that 1) his counsel failed to get him a good and
18 reasonable sentence during plea negotiations, and 2) he cannot be housed in a minimum
19 security facility or a Community Correctional Center based upon his deportation status. The
20 Court finds that the issues raised in the petition are appropriate for summary disposition.

21 **APPLICABLE LAW**

22 28 U.S.C. §2255 provides that “A prisoner under sentence of a court established by Act
23 of Congress claiming the right to be released upon the ground that the sentence was imposed
24 in violation of the Constitution or laws of the United States, or that the court was without
25 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum
26 authorized by law, or is otherwise subject to collateral attack, may move the court which
27 imposed the sentence to vacate, set aside or correct the sentence.” A district court must
28 summarily dismiss a § 2255 application “[i]f it plainly appears from the motion, any attached

1 exhibits, and the record of prior proceedings that the moving party is not entitled to relief.”
 2 Rule 4(b), Rules Governing Section 2255 Proceedings for the United States District courts.
 3 When this standard is satisfied, neither a hearing nor a response from the government is
 4 required. *See Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985).

5 RULING OF THE COURT

6 In the plea agreement, the Defendant waived “to the full extent of the law, any right to
 7 appeal or to collaterally attack the conviction and sentence, except a post-conviction collateral
 8 attack based on a claim of ineffective assistance of counsel, unless the Court imposes a
 9 custodial sentence above the greater of the high end of the guideline range recommended by
 10 the Government pursuant to this agreement at the time of sentencing or statutory mandatory
 11 minimum term, if applicable.” (ECF No. 11 at 9). This waiver is clear, express and
 12 unequivocal. Plea agreements are contractual in nature, and their plain language will generally
 13 be enforced if the agreement is clear and unambiguous on its face. *United States v. Jeronimo*,
 14 298 F.3d 1149, 1153 (9th Cir. 2005).

15 In this case, the Government recommended an adjusted offense level of 19 and a
 16 resulting guideline range of 33-41 months. (ECF No. 16 at 2). At the time of sentencing, the
 17 Government recommended a sentence of 33 months. *Id.* The Court imposed a sentence of 33
 18 months. ECF No. at 22. Pursuant to the terms of the plea agreement, the Defendant waived
 19 his right to collaterally attack the sentence imposed, except a post-conviction collateral attack
 20 based on a claim of ineffective assistance of counsel.

21 In order to prevail on a claim of ineffective assistance of counsel, Defendant must show
 22 that the performance of defense counsel fell below an “objective standard of reasonableness”
 23 and “that the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466
 24 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Deficient performance is measured by the
 25 standard of “reasonably effective assistance.” *Id.* Court applies a “strong presumption that
 26 counsel’s conduct falls within the wide range of reasonable professional assistance ...” *Id.* at
 27 689. “It is all too tempting for a defendant to second-guess counsel’s assistance after
 28 conviction or adverse sentence ...” *Id.* at 690.

1 Petitioner states:

2 I AM requesting this honorable court for seeking a reduction of my sentence for
3 the failure of my counsel during my negotiation of plea [of] guilty. The counsel
4 failed to raise this matter with the US Attorney during my plea negotiation.
Also because no help me try to get a good and reasonable sentence. Also my
attorney lie to me because ... if sign or accept the fast track I will be discount 6
5 points of the guideline range but never discount nothing of my points. I believe
that my lawyer raised no skill when represent me in court.

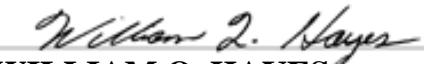
6 (ECF No. 23 at 4).

7 Defendant in this case received a two-level downward departure for fast track and a
8 sentence at the low end of the guidelines. Petitioner does not identify any failure of counsel
9 during plea negotiations. Petitioner does not identify any grounds upon which defense
10 counsel's performance fell below an objective standard of reasonableness or any grounds upon
11 which a deficient performance prejudiced the defense. The Court concludes that the Petition
12 contains no facts which rise to the level of a colorable claim of ineffective assistance of
13 counsel. It plainly appears from the motion and the record of prior proceedings that the
14 Petitioner is not entitled to relief.

15 Finally, the Defendant presents no grounds for relief under Section 2255 based upon
16 his deportation status. The Sentencing Reform Act gives the Bureau of Prisons the
17 responsibility to "designate the place of the prisoner's imprisonment." 18 U.S.C. § 3621(b).
18 See *United States v. Cubillos*, 91 F.3d 1342, 1344-45 (9th Cir. 1996). The Court of Appeals
19 for the Ninth Circuit has rejected the assertion that an alien's equal protection rights are
20 violated when he cannot be housed in a minimum security facility or a community correction
21 center based upon his deportation status. See *McClean v. Crabtree*, 173 F.3d 1176, 1185-86
22 (9th Cir. 1999).

23 IT IS HEREBY ORDERED that the Motion to vacate, set aside or correct sentence by
24 an inmate in federal custody under 28 U.S.C. § 2255 (ECF No. 23) is denied without
25 prejudice.

26 DATED: May 3, 2012

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28 WILLIAM Q. HAYES
United States District Judge